

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

| | | | |
|--|---|---------------------------------------|------------------|
| OAL FILE NUMBERS | NOTICE FILE NUMBER Z-2016-0614-01 | REGULATORY ACTION NUMBER | EMERGENCY NUMBER |
| For use by Office of Administrative Law (OAL) only | | | |
| RECEIVED DATE JUN 14 '16 | | PUBLICATION DATE JUN 24 '16 | |
| Office of Administrative Law | | | |
| NOTICE | | REGULATIONS | |

AGENCY WITH RULEMAKING AUTHORITY

Bureau of Real Estate Appraisers

AGENCY FILE NUMBER (If any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| | | | | |
|---|--|---|----------------------------------|--|
| 1. SUBJECT OF NOTICE Consulting Appraisals | | TITLE(S) 10 | FIRST SECTION AFFECTED 3542 | 2. REQUESTED PUBLICATION DATE June 24, 2016 |
| 3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other | | 4. AGENCY CONTACT PERSON Kyle Muteff | TELEPHONE NUMBER 916.341.6126 | FAX NUMBER (Optional) |
| OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn | | NOTICE REGISTER NUMBER | | PUBLICATION DATE |

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

| | |
|------------------------------|--|
| 1a. SUBJECT OF REGULATION(S) | 1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) |
|------------------------------|--|

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)

| | |
|--|--------|
| SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.) | ADOPT |
| | AMEND |
| | REPEAL |
| TITLE(S) | |

3. TYPE OF FILING

| | | | |
|--|---|---|---|
| <input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) | <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. | <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) | <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) |
| <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) | <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) | <input type="checkbox"/> File & Print | <input type="checkbox"/> Print Only |
| <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) | <input type="checkbox"/> Other (Specify) _____ | | |

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

| | | | |
|---|--|---|--|
| <input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) | <input type="checkbox"/> Effective on filing with Secretary of State | <input type="checkbox"/> §100 Changes Without Regulatory Effect | <input type="checkbox"/> Effective other (Specify) _____ |
|---|--|---|--|

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

| | | |
|--|--|---|
| <input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) | <input type="checkbox"/> Fair Political Practices Commission | <input type="checkbox"/> State Fire Marshal |
| <input type="checkbox"/> Other (Specify) _____ | | |

| | | | |
|-------------------|------------------|-----------------------|---------------------------|
| 7. CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) |
|-------------------|------------------|-----------------------|---------------------------|

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

| | |
|--------------------------------------|------|
| SIGNATURE OF AGENCY HEAD OR DESIGNEE | DATE |
| TYPED NAME AND TITLE OF SIGNATORY | |

Notice of Proposed Action

Title 10: Bureau of Real Estate Appraisers

NOTICE IS HEREBY GIVEN that the Bureau of Real Estate Appraisers (“Bureau” or “BREA”) is proposing to take the action described in the informative digest below. Any interested person may present statements or arguments relevant to the action proposed, orally or in writing, at a hearing to be held at:

Department of Consumer Affairs
1747 North Market Blvd.
1st Floor Hearing Room
Sacramento, CA 95834

Date: August 10, 2016
Time: 12:30 p.m.

Written comments including those sent by mail, facsimile, or email to the address listed under “Contact Person” in this Notice, must be received by the Bureau at its office not later than 5:00 p.m. on August 9, 2016 or must be received by the Bureau at the hearing.

The Bureau, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 11313, 11314, and 11340 Business and Professions Code and to implement, interpret and make specific Sections 11340, 11345.4, 11345.45, and 11345.6 Business and Professions Code, the Bureau is considering revising sections 3570, 3542, and 3577 to Title 10 of the California Code of Regulations as described in this Notice.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Currently, section 3570 allows for 90 days to process a temporary practice permit (TPP). Federal law requires all TPPs be processed in five days.¹ Therefore, Section 3570 is proposed to be amended to remove the 90 day timeline for processing a TPP. Section 3570 is also being

¹ Title XI of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 prohibits states from imposing burdensome requirements, as determined by the ASC, for temporary practice. (12 U.S.C. section 3351). The ASC has set a maximum of five days to approve or deny a TPP. (See ASC Policy Statement Two).

amended to remove the outdated language in subdivision (c) regarding past processing times which do not belong in regulation. Further, section 3570 contains references to Government Code sections 15376 and 15377 which were repealed effective January 1, 2003 with A.B. 1757.

Currently, section 3542 allows for experience gained through standard four or five appraisals. Section 3542 is proposed to be amended to comply with federal requirements. Under the provisions of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), the Appraisal Standard Board (ASB)² develops, interprets, and amends the Uniform Standards of Professional Appraisal Practice (USPAP). USPAP constitutes the minimum standard of conduct and performance for a California licensed appraiser in any work or service performed that is addressed by USPAP.³ The ASB recently amended USPAP and retired standard rule four and five. Requirements for each level of licensure shall, at a minimum, meet the criteria established by the Appraiser Qualification Board (AQB).⁴ The AQB states that all experience must be USPAP-compliant. Therefore, BREa can no longer accept experience gained through standard four or five appraisals. As such, BREa proposes to remove standard four and five appraisals from section 3542. Section 3542 is also proposed to be amended to allow BREa to approve practicum courses. This will allow BREa, not just AQB, to approve practicum courses that can provide experience credit for trainee appraisers.

Currently, section 3577 mentions “consulting assignments.” Section 3577 is being amended to remove reference to “consulting assignments.” This change is necessary because USPAP retired consulting appraisals so appraisers can no longer complete consulting assignments. Therefore, appraisal management companies cannot improperly influence consulting assignments because there are no consulting assignments to influence.

ANTICIPATED BENEFITS

The benefit will be compliance with state and federal requirements and removal of outdated language. Also, allowing BREa to approve practicum courses will allow BREa, not just AQB, to approve practicum courses. This change can provide excellent experience credit for trainee appraisers. Currently, there are no AQB approved practicum courses.

CONSISTENCY OR COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations, the Bureau has conducted a search of any similar regulations on this topic and has determined that there is no reasonable interpretation of any state regulation that is inconsistent or incompatible with the proposed action.

² The ASB is composed of board members who are appointed by the Appraisal Foundation (AF). The AF is not for profit corporation monitored by the Appraisal Subcommittee (ASC). The ASC is a federally created subcommittee lead by heads of federal financial agencies.

³ Business and Professions Code section 11319

⁴ Business and Professions Code section 11314. The structure of the AQB is similar to the ASB.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Minimal.

Nondiscretionary Costs/Savings to Local Agencies: None

Cost to, or mandate imposed on, any Local Agency or School District for Which Government Code Section 17500-17630 Require Reimbursement: None

Business Impact: The Bureau has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

As part of its Economic Impact Analysis, the Bureau has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services. The federal requirements are mandatory for all 50 states. Accordingly, this action does not affect California competitiveness.

Impact on Jobs/New Businesses: None

Cost Impact on Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Businesses: The Bureau has determined that the proposed regulations will not significantly affect small businesses. This is because the only impact of the proposed action would be the ability for the Bureau to approve practicum courses. If the Bureau did choose to approve such a course, it would charge \$350 to review the course as with any other educational course. If approved, the approved party would be able to offer the course.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Impact on Jobs/New Businesses: The Bureau has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, new or existing businesses, or the expansion of businesses in the State of California.

Benefits: The benefits will be in compliance with state and federal requirements, removal of outdated language and allowance of BRE approved practicum courses.

Occupations/Businesses Impacted: The proposed regulation will not have an occupational/business impact.

Reporting Requirements: The proposed regulation does not set forth any new reporting requirements.

Comparable Federal Regulations: None

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative considered by the Bureau or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action containing information upon which the proposal is based.

The proposed text, this notice, the statement of reasons, and any other relevant documents are on the Bureau's website at www.brea.ca.gov. Click the "Laws" tab at the top of the page. Under the heading "Rulemaking Notifications" find the documents associated with this rulemaking subject: "License Application Processing."

AVAILABILITY AND LOCATON OF THE STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below. As of the date this notice is published in the Notice of Register, the rulemaking file consists of this notice, the proposed text of the regulation and the initial statement of reasons. Copies may be obtained by contacting person named below or by accessing the website as provided above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, BREa may adopt the proposed regulation substantially, as described in this notice. If BREa makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before BREa adopts the regulations as revised. Please send requests for copies of any modified regulation to the attention of the contact person named below. BREa will accept written

comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its competition, copies of the Final Statement of Reasons may be obtained by contacting the person named below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Kyle Muteff, Legal Counsel
1102 Q Street, Suite 4100
Phone: 916-341-6126
FAX: 916-440-7406
kyle.muteff@orea.ca.gov

The backup person is:
Thu Tran
1102 Q Street, Suite 4100
Phone: 916-440-7876
FAX: 916-440-7406
Thu.Tran@orea.ca.gov

**Bureau of Real Estate Appraisers
Initial Statement of Reasons**

Hearing Date: August 10, 2016

Subject Matter of Proposed Regulations: Consulting Appraisal

Sections Affected: Amend Sections 3542, 3570, and 3577 to Title 10 of the California Code of Regulations

Background/Problem Addressed

Section 3570 set the processing time for a temporary practice permit (TPP) at 90 days. However, the federal rules set the maximum processing time for TPPs at five days.¹ Therefore, it is inaccurate and misleading to include TPPs with the list of applications processed within 90 days. As such, TPPs must be removed from the 90 day processing time in section 3570. Section 3570 is also being amended to remove the outdated language in subdivision (c) regarding past processing times. Further, section 3570 contains references to Government Code sections 15376 and 15377, but those sections were repealed with an effective date of January 1, 2004.²

Applicants for licensure, except trainees, need to gain experience before becoming a licensed appraiser. BREa has several categories of experience that qualify for licensure. Those categories are stated in section 3542. However, several categories reference standard four and five appraisal which have been retired by the federal regulators.³ This means BREa must not accept standard four and five appraisals as experience unless the experience was gained prior to the category being retired.⁴ Therefore, BREa proposes to remove standard four and five appraisals from the categories of experience. Further, BREa proposes to amend section 3542 to allow BREa to approve practicum courses. This will allow individuals to gain experience through practicum courses if BREa approves a practicum course.

Section 3577 contains unnecessary language. Specifically, section 3577 refers to “consulting appraisals” which are no longer allowed by USPAP. Therefore, BREa proposes to remove this unnecessary language.

¹ Title XI of Financial Institutions Reform, Recovery, and Enforcement Act of 1989 prohibits states from imposing burdensome requirements, as determined by the ASC, for temporary practice. (12 U.S.C. section 3351). The ASC has set a maximum of five days to approve or deny a TPP. (See ASC Policy Statement Two).

² A.B. 1757

³ Uniform Standards of Professional Appraisal Practice (USPAP) retired standard four and five appraisals effective January 1, 2014. USPAP constitutes the minimum standard of conduct and performance for a California licensed appraiser (Business and Professions Code section 11319). Requirements for each level of licensure shall, at a minimum, meet the criteria established by the Appraiser Qualification Board (AQB) and the AQB states that all experience must be USPAP compliant. (Business and Professions Code section 11314)

⁴ Retired effective January 1, 2014

Factual Basis/Rationale

California Code of Regulation section 3570 is proposed to be amended as follows:

(b) Within 90 days of receipt of a completed Request for Issuance, Form REA 3008 (Rev. 5/8/00), Application for Renewal, Form REA 3012, (Rev. 5/8/00) ~~or Request for Temporary Practice Permit, Form REA 3009, (Rev. 3/16/10),~~ Course Provider Accreditation Form REA 3013 (Rev. 5/8/00), or Course Accreditation and Description Form REA 3014 (Rev. 5/8/00), the Bureau shall issue or deny the requested license or accreditation provided that: ...

This amendment is needed because BREa must approve all TPPs in five not 90 days.

BREa proposes to remove subdivision (c) which currently states:

(c) The Bureau's completed review of an application for the two years immediately preceding this regulation has been approximately:

- (1) a minimum of 90 days.
- (2) a median of 120 days.
- (3) a maximum of 150 days.

BREa proposes to remove subdivision (c) because this timeframe is no longer accurate. BREa has decided not to update this regulation with current timeframes because it is not necessary or appropriate to have processing times in regulation.

BREa proposes to remove references to Government Code 15376 and 15377 because those sections were repealed.

BREa proposes to remove “particularly Standards Rules 4 and 5” from section 3542 This will bring BREa into compliance with federal requirements which no longer recognize standard four and five appraisals.

BREa also proposes to amend subdivision (b) as follows:

(b) Only appraisals performed for a business purpose (e.g. loans, litigation, etc.) may be credited for purposes of meeting the minimum experience requirements except that experience gained through case studies and practicum courses that are approved by the AQB Course Approval Program or the Bureau may be credited for no more than 50 percent of the total experience requirement.

Currently, AQB has not approved any practicum course. BREa believes individuals or entities can develop and implement effective practicum courses. These courses will benefit applicants by providing them an alternative avenue to gaining experience. This alternative avenue is needed

because prospective appraisers are having difficulty finding appraisers to supervise their work. BREa anticipates a prospective appraiser with practicum experience will be able to find a supervisor easier than without the course. This is because the course will provide the individual experience the supervisor can build upon. BREa needs to support the next generation of California appraisers.

Finally, BREa proposes to amend section 3577 to remove the words “consulting appraisal.” Appraisers can no longer complete consulting appraisals. Thus, appraisal management companies can no longer improperly influence consulting appraisals because they no longer occur.

Underlying Data

The Bureau relied upon Policy Statement 2 attached as Exhibit “A”.

Fiscal Impact Analysis in General

This proposal has no significant fiscal impact.

Economic Impact Analysis/Assessment

The Bureau has made the initial determination that the proposed regulatory action would have no statewide adverse economic impact directly affecting California.

- **Analysis of creation/elimination of jobs:** There will be no creation or elimination of jobs.
- **Analysis of creation/elimination of businesses:** There will be no creation or elimination of businesses.
- **Analysis of expansion of business:** The proposed regulations are not expected to, directly or indirectly, lead to the expansion of new businesses within California.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:** The proposed regulations do not affect worker safety or the state’s environment because the proposal has nothing to do with worker safety or the environment.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of BREa would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to the affected parties than the proposed regulation.

POLICY STATEMENT 2

Temporary Practice

A. Requirement for Temporary Practice

Title XI requires State agencies to recognize, on a temporary basis, the certification or license of an out-of-State appraiser entering the State for the purpose of completing an appraisal assignment¹⁹ for a federally related transaction. The out-of-State appraiser must register with the State agency in the State of temporary practice (Host State). A State may determine the process necessary for "registration" provided such process complies with Title XI and is not "burdensome" as determined by the ASC or involve excessive fees. Thus, a credentialed appraiser²⁰ from State A has a statutory right to enter State B (the Host State) to perform an assignment concerning a federally related transaction, so long as the appraiser registers with the State agency in State B prior to performing the assignment. Though Title XI contemplates reasonably free movement of credentialed appraisers across State lines, an out-of-State appraiser must comply with the Host State's real estate appraisal statutes and regulations and is subject to the Host State's full regulatory jurisdiction. States should utilize the National Registry to verify credential status on applicants for temporary practice.

B. Excessive Fees or Burdensome Requirements

Title XI prohibits States from imposing excessive fees or burdensome requirements, as determined by the ASC, for temporary practice.²¹ Adherence by State agencies to the following mandates and prohibitions will deter the imposition of excessive fees or burdensome requirements.

1. Host State agencies must:
 - a. issue temporary practice permits on an assignment basis;
 - b. issue temporary practice permits within five business days of receipt of a completed application, or notify the applicant and document the file as to the circumstances

¹⁹ See Appendix B, *Glossary of Terms*, for the definition of "assignment."

²⁰ See Appendix B, *Glossary of Terms*, for the definition of "credentialed appraisers."

²¹ Title XI § 1122 (a) (2), 12 U.S.C. § 3351.

- justifying delay or other action;
 - c. issue temporary practice permits designating the actual date of issuance;
 - d. take regulatory responsibility for a temporary practitioner's unethical, incompetent and/or fraudulent practices performed while in the State;
 - e. notify the appraiser's home State agency²² in the case of disciplinary action concerning a temporary practitioner; and
 - f. allow at least one temporary practice permit extension through a streamlined process.
2. Host State agencies may not:
- a. limit the valid time period of a temporary practice permit to less than 6 months, except in the case of an appraiser not holding a credential in active status for at least that period of time;
 - b. limit an appraiser to one temporary practice permit per calendar year;²³
 - c. charge a temporary practice permit fee exceeding \$250, including one extension fee;
 - d. impose State appraiser qualification requirements upon temporary practitioners that exceed AQB Criteria for the credential held;
 - e. require temporary practitioners to obtain a certification or license in the State of temporary practice;
 - f. require temporary practitioners to affiliate with an in-State licensed or certified appraiser;
 - g. refuse to register licensed or certified appraisers seeking temporary practice in a State that does not have a licensed or certified level credential; or
 - h. prohibit temporary practice.
3. Home State agencies may not:
- a. delay the issuance of a written "letter of good standing" or similar document for more than five business days after receipt of a request; or

²² See Appendix B, Glossary of Terms, for the definition of "home State agency."

²³ State agencies may establish by statute or regulation a policy that places reasonable limits on the number of times an out-of-State certified or licensed appraiser may exercise his or her temporary practice rights in a given year. If such a policy is not established, a State agency may choose not to honor an out-of-State certified or licensed appraiser's temporary practice rights if it has made a determination that the appraiser is abusing his or her temporary practice rights and is regularly engaging in real estate appraisal services within the State.

- b. fail to take disciplinary action, if appropriate, when one of its certified or licensed appraisers is disciplined by another State agency for unethical, incompetent or fraudulent practices under a temporary practice permit.

C. Summary of Requirements

1. States must recognize, on a temporary basis, appraiser credentials issued by another State if the property to be appraised is part of a federally related transaction.²⁴
2. State agencies must adhere to mandates and prohibitions as determined by the ASC that deter the imposition of excessive fees or burdensome requirements for temporary practice.²⁵

²⁴ Title XI § 1122 (a) (1), 12 U.S.C. § 3351.

²⁵ Title XI § 1122 (a) (2), 12 U.S.C. § 3351.

PROPOSED TEXT
California Code of Regulations
Title 10, Chapter 6.5, Article 4

The text below represents existing language modified to show proposed changes. Proposed deletions are in ~~striketrough~~. Proposed additions are in underline.

§ 3570. Time Limits for Processing Applications.

(a) Within 90 days of receipt of the Initial Application, Forms REA 3001 (Rev. 6/1/09), 3002 (Rev. 3/16/10), 3003 (Rev. 3/16/10) and 3004, (Rev. 4/7/08), Upgrade Application, Form REA 3023 (Rev. 5/8/00), Renewal Application, Form REA 3012 (Rev. 5/8/00), ~~Request for Temporary Permit, Form REA 3009 (Rev. 3/16/10),~~ Course Provider Accreditation Form REA 3013 (Rev. 5/8/00), or Course Accreditation and Description Form REA 3014 (Rev. 5/8/00), the Bureau shall give written notice to the applicant that:

(1) the application is complete; or

(2) the application is deficient, describing what information is deficient and/or inadequate.

(A) An application is deficient if the applicant has not completed and provided the Bureau with all of the items required by Article 4 of these regulations, or any other information requested by the Bureau to complete the application.

(b) Within 90 days of receipt of a completed Request for Issuance, Form REA 3008 (Rev. 5/8/00), Application for Renewal, Form REA 3012, (Rev. 5/8/00) ~~or Request for Temporary Practice Permit, Form REA 3009, (Rev. 3/16/10),~~ Course Provider Accreditation Form REA 3013 (Rev. 5/8/00), or Course Accreditation and Description Form REA 3014 (Rev. 5/8/00), the Bureau shall issue or deny the requested license or accreditation provided that:

(1) The applicant has provided all required information;

(2) All required fees have been received by the Bureau; and

(3) Results of applicable criminal records checks have been received from the Department of Justice and/or Federal Bureau of Investigation, and any background check has been completed.

~~(c) The Bureau's completed review of an application for the two years immediately preceding this regulation has been approximately:~~

~~(1) a minimum of 90 days.~~

~~(2) a median of 120 days.~~

~~(3) a maximum of 150 days.~~

~~(c)(d)~~ A notice of deficiency pursuant to (a)(2) above shall include written notice of the following:

(1) That the applicant shall have the right to request a hearing by the Chief on the grounds that:

(A) The Bureau did not send the applicant a deficiency notice or a completed application notice within the time provided in (a) above; or

(B) The Bureau did not issue the license or submit to the applicant a deficiency notice within the time provided in (b) above.

(2) A request for hearing under this section shall be made to the Chief, in writing, clearly specifying the violations alleged, within 30 days from the date the notice of deficiency is mailed from the Bureau.

(3) If the Chief determines that the Bureau exceeded the time limits without good cause, ~~as defined in Section 15376 of the Government Code or exempted in Section 15377 of the Government Code~~, the applicant shall be reimbursed in full of any and all filing fees paid by the applicant and actually received by the Bureau.

~~(d)(e)~~ The time necessary to complete an informal conference in accordance with Section 3729 of these regulations, and/or a hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, shall be excluded in determining whether or not the Bureau has complied with the 90 day requirement of subsections (a) and (b) above.

~~(e)(f)~~ Every adjudicatory hearing to determine whether an application should be granted shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

~~(f)(g)~~ In no event shall a failure to comply with the requirements of this Section constitute grounds in and of itself for the issuance of a license or approval of accreditation.

Note: Authority cited: Sections 11313 and 11314, Business and Professions Code. Reference: ~~Sections 15376 and 15378, Government Code~~ Section 11340 Business and Professions Code.

§ 3542. Acceptable Categories of Experience and Criteria for Each Category.

(a) Acceptable categories of experience to meet the minimum requirements of Section 3541 and the criteria for each category are as follows:

(1) Fee and staff appraisal (a real property appraisal prepared by a person who is employed by another, usually a lending institution or government agency, or who is paid a fee for the appraisal assignments he or she performs):

- (A) Shall be a written document;
- (B) Shall have used the entire appraisal process;
- (C) Shall have used all appraisal methods (market, cost, income) customarily used for a particular property type (i.e., residential, commercial, industrial, etc.);
- (D) Shall conform to USPAP, particularly Standards Rules 1 and 2; and
- (E) Analysis must be completed by the applicant.

(2) Ad valorem tax appraisal (a real estate appraisal prepared by an appraiser which estimates a value that is used for property tax purposes):

(A) Appraisal:

- 1. Shall be a written document;
- 2. Shall use appraisal methods (sales comparison, cost, income) required for the property type being appraised (i.e. residential or non-residential);
- 3. Shall effectively use the appraisal process; and
- 4. Shall conform to USPAP, particularly Standards Rules 1 and 2.

(B) Mass Appraisal:

- 1. Shall conform to USPAP, particularly Standards Rules 1 and 2, or 6.

(3) Review of an appraisal (field or desk):

- (A) Shall be a written document separate from the appraisal itself;
- (B) The review shall be of an appraisal prepared either by employees, associates or others;
- (C) The appraisal being reviewed shall not be signed by the reviewer;
- (D) Shall be a “technical review” where the review appraiser forms an opinion as to whether the analyses, opinions, and conclusions in the appraisal report under review are appropriate and reasonable, as opposed to an “administrative review”, which is work performed by clients and users of appraisal services as a due

diligence function in the context of making a business decision (e.g., underwriting, buying, selling, etc.); and

(E) The work shall conform to USPAP, particularly Standard Rule 3.

(4) Appraisal analysis:

(A) Shall be a written document; and

(B) The work shall conform to USPAP, ~~particularly Standards Rules 4 and 5.~~

(5) Real Estate consulting:

(A) Shall be a written document; and

(B) The work shall conform to USPAP, ~~particularly Standards Rules 4 and 5; and~~

~~(C) "Real estate consulting" incorporates those activities described in USPAP Standards Rules 4 and 5.~~

(6) Highest and best use analysis:

(A) Shall be a written document; and

(B) The work shall conform to USPAP, ~~particularly Standards Rules 4 and 5.~~

(7) Feasibility analysis/study:

(A) Shall be a written document; and

(B) The work shall conform to USPAP, ~~particularly Standards Rules 4 and 5.~~

(8) Teaching of appraisal courses:

Teaching of appraisal courses shall not be an acceptable category of experience to meet minimum requirements after December 31, 1997.

(9) Setting forth opinions of value of real property for tax purposes:

(A) Shall be experience as an employee of a California County Assessor's Office or the California Board of Equalization in setting forth opinions of value of real property for tax purposes, and;

1. Shall be a written document;

2. Shall use appraisal methods (sales comparison, cost, income) required for the property type being appraised (i.e. residential or non-residential);

3. Shall effectively use the appraisal process; and

4. Shall conform to USPAP, particularly Standards Rules 1 and 2, or 6.

(10) Assisting in the preparation of appraisals:

(A) Shall be a written document;

(B) Shall effectively use the appraisal process performing market research, data analysis and applying the appropriate appraisal techniques. The work experience must go beyond such tasks as taking photographs, typing the appraisal report, measuring improvements, or finding sales that may or may not be used in the appraisal. At least 75% of the professional work shall have been performed by the applicant;

(C) The work shall conform to all of the applicable USPAP standards, state laws and Bureau of Real Estate Appraisers (BREA) regulations; and

(D) A maximum of 400 hours of assisting in the preparation of appraisals may be accepted for credit towards meeting the minimum experience requirements.

(11) Real estate valuation experience such as that of a real estate lending officer or a real estate broker:

(A) Appraisal: Same requirements as Category 1;

(B) Review of Appraisals: Same requirements as Category 3; and

(C) Consulting:

1. Shall be a written document; and

2. The work shall conform to USPAP, ~~particularly Standards Rules 4 and 5.~~

(b) Only appraisals performed for a business purpose (e.g. loans, litigation, etc.) may be credited for purposes of meeting the minimum experience requirements except that experience gained through case studies and practicum courses that are approved by the AQB Course Approval Program or the Bureau may be credited for no more than 50 percent of the total experience requirement.

(c) Each applicant shall meet additional requirements as may be established from time to time by the Appraiser Qualifications Board of The Appraisal Foundation.

Note: Authority cited: Sections 11313, 11314 and 11340, Business and Professions Code.

Reference: Section 11340, Business and Professions Code.

§ 3577. Minimum Standards of Practice for Appraisal Management Companies.

All Appraisal Management Companies must ensure that they adhere to the following business practices when performing appraisal management services for properties located within the State of California:

(a) Appraisal Management Companies will delegate appraisal assignments for completion only to independent contractor or employee appraisers that possess the licenses and certificates required by the Bureau.

(b) Appraisal Management Companies must adopt reasonable procedures designed to ensure that all appraisal assignments completed by its independent contractor or employee appraisers are performed in accordance with the Uniform Standards of Professional Appraisal Practice.

(c) Appraisal Management Companies must maintain records of each of the following for each service request:

(1) Date of the receipt of the request;

(2) The name of the person from whom the request was received;

(3) The name of the client for whom the request was made, if different from the name of the person from whom the request was received.

(4) The name of the appraiser or appraisers assigned to perform the contracted service; and

(5) The date of delivery of the appraisal product to the client.

(d) Appraisal Management Companies must maintain records of all appraisal fees dispersed to contracted appraisers and the final fee charged to the lender/client.

(e) An Appraisal Management Company cannot prohibit a contracted appraiser/client from disclosing the fee paid to the appraiser/client for an appraisal assignment in the body of the appraisal report.

(f)(1) No Appraisal Management Company shall improperly influence or attempt to improperly influence the development of an appraisal report ~~or, review or consulting assignment~~ by engaging in, without limitation, any of the following actions:

(A) Withholding or threatening to withhold the timely payment for a contracted appraisal assignment that is completed in accordance with the Uniform Standards of Professional Appraisal Practice and with contractual provisions as agreed to by the Appraisal Management Company and the appraisal contractor;

(B) Withholding or threatening to withhold future business with an appraisal contractor solely based on an appraisal result;

(C) Basing the appraisal fee for an appraisal assignment on a pre-determined value;

(D) Attempting to influence the development of an appraisal assignment through coercion, extortion or bribery;

(E) Expressly or impliedly promising future business, promotions, or increased compensation for a contracted appraiser based on certain business practices not in compliance with the Uniform Standards of Professional Appraisal Practice;

(2) Subdivision (f)(1) of this Section does not prohibit an Appraisal Management Company or an individual with an interest in a real estate transaction from requesting an appraiser to:

(A) Consider additional appropriate property information including relevant sales comparables not considered in the initial appraisal report;

(B) Provide further detail, substantiation or explanation of the appraiser's conclusion of value; or

(C) Correct errors in the appraisal report.

(g) The Appraisal Management Company shall not base the payment of an appraisal fee on a mortgage-related event occurring subsequent to completion of the appraisal, i.e. close of escrow.

(h) The appraiser shall not be required to provide the Appraisal Management Company with the appraiser's digital signature.

(i) The Appraisal Management Company shall not alter, amend, or change an appraisal report submitted by a licensed or certified appraiser by removing the appraiser's signature or seal or by adding information to or removing information from the appraisal report with an intent to change the value conclusion.

(j) The Appraisal Management Company shall not remove an independent appraiser from their panel of approved appraisers without prior written notice that includes evidence which supports the basis of fact that the appraiser has violated the Uniform Standards of Professional Appraisal Practice or other applicable appraisal regulations or state statutes, or evidence which demonstrates substandard performance, improper or unprofessional behavior, or other substantive deficiencies.

(k) An Appraisal Management Company shall notify the Bureau within 10 business days of any change to or addition of a Controlling Person of the company.

Note: Authority cited: Sections 11313 and 11314, Business and Professions Code. Reference: Sections 11345.4, 11345.45 and 11345.6, Business and Professions Code; and Section 1090.5, Civil Code.

ECONOMIC AND FISCAL IMPACT STATEMENT**(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

| | | | |
|--|--------------------------------------|---|---|
| DEPARTMENT NAME Bureau of Real Estate Appraisers | CONTACT PERSON Kyle Muteff | EMAIL ADDRESS Kyle.muteff@orea.ca.gov | TELEPHONE NUMBER 916.341.6126 |
| DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Consulting Appraisals | | | NOTICE FILE NUMBER Z |

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|--|---|
| <input checked="" type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input checked="" type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below): |

*If any box in Items 1 a through g is checked, complete this Economic Impact Statement.**If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.*

2. The Bureau of Real Estate Appraisers estimates that the economic impact of this regulation (which includes the fiscal impact) is:

(Agency/Department)

- ☒ Below \$10 million
- ☐ Between \$10 and \$25 million
- ☐ Between \$25 and \$50 million
- ☐ Over \$50 million [If the economic impact is over \$50 million, agencies are required to submit a [Standardized Regulatory Impact Assessment](#) as specified in Government Code Section 11346.3(c)]

3. Enter the total number of businesses impacted: 0Describe the types of businesses (Include nonprofits): Potential practicum course providersEnter the number or percentage of total businesses impacted that are small businesses: 04. Enter the number of businesses that will be created: 0 eliminated: 0Explain: N/A

5. Indicate the geographic extent of impacts: ☒ Statewide

☐ Local or regional (List areas): _____

6. Enter the number of jobs created: 0 and eliminated: 0Describe the types of jobs or occupations impacted: N/A

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? ☐ YES ☒ NO

If YES, explain briefly: _____

ECONOMIC AND FISCAL IMPACT STATEMENT**(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)**B. ESTIMATED COSTS** *Include calculations and assumptions in the rulemaking record.*1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ See attached

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: N/A

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted. \$ _____

4. Will this regulation directly impact housing costs? ☐ YES ☒ NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? ☒ YES ☐ NOExplain the need for State regulation given the existence or absence of Federal regulations: 12 U.S.C. 3351Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ 0**C. ESTIMATED BENEFITS** *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: The benefit will be compliance with State and Federal law and the allowance of BREa to approve practicum courses.2. Are the benefits the result of: ☒ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?Explain: Business and Professions Code section 11314 and 113193. What are the total statewide benefits from this regulation over its lifetime? \$ 04. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: N/A**D. ALTERNATIVES TO THE REGULATION** *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

No reasonable alternative which was considered or that has otherwise been identified.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)**2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:**Regulation: Benefit: \$ 0 Cost: \$ 0Alternative 1: Benefit: \$ 0 Cost: \$ 0Alternative 2: Benefit: \$ 0 Cost: \$ 0**3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives:**N/A**4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs?**☐ YES☒ NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.**California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.***1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million?** ☐ YES ☒ NO*If YES, complete E2. and E3**If NO, skip to E4***2. Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:**

Alternative 1: _____

Alternative 2: _____

*(Attach additional pages for other alternatives)***3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:**

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?☐ YES☒ NO*If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.***5. Briefly describe the following:**The increase or decrease of investment in the State: N/AThe incentive for innovation in products, materials or processes: N/AThe benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: N/A

ECONOMIC AND FISCAL IMPACT STATEMENT**(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- ☐ 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- ☐ a. Funding provided In _____
Budget Act of _____ or Chapter _____, Statutes of _____

- ☐ b. Funding will be requested in the Governor's Budget Act of _____
Fiscal Year: _____

- ☐ 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- ☐ a. Implements the Federal mandate contained in _____
- ☐ b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- ☐ c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- ☐ d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- ☐ e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- ☐ f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- ☐ g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- ☐ 3. Annual Savings. (approximate)

\$ _____

- ☐ 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- ☒ 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- ☐ 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)**B. FISCAL EFFECT ON STATE GOVERNMENT** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:☐ a. Absorb these additional costs within their existing budgets and resources.☐ b. Increase the currently authorized budget level for the _____ Fiscal Year☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☐ 3. No fiscal impact exists. This regulation does not affect any State agency or program.☒ 4. Other. Explain See attached**C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS** *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*☐ 1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

☐ 2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

☒ 3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.☐ 4. Other. Explain _____

FISCAL OFFICER SIGNATURE



DATE

5-9-16

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

6/9/16

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER



DATE

Attachment to Form 399

Bureau of Real Estate Appraisers Proposed Regulation Consulting Appraisals

ECONOMIC IMPACT

ESTIMATED PRIVATE SECTOR COST IMPACTS

B.1 ESTIMATED COSTS.

Per section 3582(b)(10) of the California Code of Regulations (CCR), the Bureau may charge a \$350.00 fee for course review and approval. If and when the Bureau decides to start approving practicum courses, and if a business chooses to apply for course approval, this fee would create a very minor economic impact to the business. It is assumed there would also be an offsetting revenue impact, assuming the business would charge a fee to a person taking the course, to cover its costs. This fee would then likewise create a nominal impact on individuals who choose to take a course to gain experience. A practicum course is not a requirement of licensure but an alternative means of gaining experience. As such, the Bureau does not anticipate many, if any applications for course approval.

Since two years have passed since the retirement by the federal government of standard 4 and 5 appraisals, and the prohibition of consulting appraisals, it is assumed that these two items would not be a surprise to a current applicant and thus would create no economic impact.

FISCAL IMPACT

FISCAL EFFECT ON STATE GOVERNMENT

B.4 – OTHER. EXPLAIN

Once, and if, the Bureau starts approving practicum courses, it will incur costs for the course review and approval process, and it is assumed the \$350.00 fee allowable by CCR 3582(b)(10) will cover these costs. The Bureau does not anticipate many, if any applications for practicum course approval.